

REMARKS

I. Introduction

Claims 5 to 8 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant notes with appreciation the acknowledgment of the claim for foreign priority and the indication that all certified copies of the priority documents have been received.

Applicant thanks the Examiner for considering the previously-filed Information Disclosure Statement, PTO-1449 paper and cited references.

II. Objection to the Drawings

As regards the objection to the drawings, neither the Specification nor the Figures of the present application indicate that Figure 1 illustrates only that which is old. Accordingly, it is respectfully submitted that Figure 1 need not include the legend --Prior Art--. Withdrawal of this objection is therefore respectfully requested.

III. Rejection of Claims 5 to 8 Under 35 U.S.C. § 103(a)

Claims 5 to 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of that which is characterized as "admitted prior art" and the publication "Information Technology - Coding of Audio-Visual Objects 14496-2 (ISO/IEC)" (hereinafter "ISO 14496-2"). Applicant respectfully submits that the combination of that which is characterized as "admitted prior art" and ISO 14496-2 does not render unpatentable the present claims for the following reasons.

As an initial matter, in addressing the merits of this rejection, Applicant does not concede the correctness of the Office Action's characterization of the subject matter in Figure 1 as prior art.

Furthermore, ISO 14496-2 has a publication date of May 29, 1998. In contrast, the present application is a national stage application based on PCT International Application No. PCT/DE98/02132, filed on July 28, 1998 and claims priority to Application No. 197 35 607.9, filed in the Federal Republic of Germany on August 15, 1997. A claim of priority to German Application No. 197 35 607.9 was

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made, inter alia, in the "Combined Declaration and Power of Attorney for Patent Application," filed on May 10, 2000. It is believed and respectfully submitted that a copy of a certified copy of German Application No. 197 35 607.9 has been received by the United States Patent and Trademark Office, as indicated in the Office Action Summary and in the Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495, dated May 18, 2000. A certified translation of German Application No. 197 35 607.9 is enclosed herewith. In view of the foregoing, it is respectfully submitted that ISO 14496-2 does not constitute prior art against the present application. Withdrawal of this rejection is therefore respectfully requested.

As regards the Official Notice statements contained on page 4 of the Office Action, Applicant respectfully traverses these contentions to the extent that they are maintained and requests that the Examiner provide specific evidence to establish those assertions and/or contentions under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because this rejection is apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also M.P.E.P. § 2144.03).

Moreover, judicial or official notice that is based on subjective and unsupported reasoning will not sustain an obviousness rejection. In the M.P.E.P. cited case of In re Ahlert, 165 U.S.P.Q. 418, 420-21 (C.C.P.A. 1970)), the Court made plain that:

Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. **Allegations concerning specific "knowledge" of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.**

In re Ahlert, 165 U.S.P.Q. at 420 to 21 (citations omitted).

Otherwise, if the Examiner cannot provide either references or an affidavit to support these contentions, it is respectfully requested that the rejections of the claims under 35 U.S.C. § 103 be withdrawn for this additional reason.

In view of the foregoing, it is respectfully submitted that the present rejection has been obviated, and withdrawal of this rejection is therefore respectfully requested.

IV. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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